



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 08 2011

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T:EP:RA:A2

In re:

Plan Year: .

Dear

This letter is in response to your authorized representative's correspondence of March 13, 2008, requesting disallowance of the deduction of employer contributions with respect to the Plan for the plan year commencing April 1,

Section 401(a)(2) of the Code generally requires a trust instrument forming part of a pension, profit-sharing, or stock bonus plan to prohibit the diversion of corpus or income for purposes other than the exclusive benefit of the employees or their beneficiaries. Section 403(c)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. 93-406, 1974-3 C.B. 1, contains a similar prohibition against diversion of the assets of a plan.

Revenue Procedure 90-49 sets forth the procedure whereby, under certain circumstances, a disallowance of the deduction of employer contributions to a qualified defined benefit pension plan may be obtained; thereby, fulfilling a condition under which such contributions could revert to the employer.

Revenue Ruling 91-4 prescribes that a pension plan qualified under section 401(a) of the Code may include terms providing for a return of employer contributions under the circumstances specified in section 403(c)(2) of ERISA. Section 403(c)(2) of ERISA, for which there is no parallel provision of the Code, provides that the general prohibition against diversion of plan assets does not preclude the return of a contribution made by an employer to a plan if (1) the contribution is made by reason of a mistake of fact (ERISA section 403(c)(2)(A)), (2) the contribution is conditioned on qualification of the plan under the Code, or (3) the contribution is conditioned on its deductibility under section 404 of the Code (ERISA section 403(c)(2)(C)).

Revenue Ruling 91-4 further provides that determination of whether a return of employer contributions, due to a mistake of fact or the disallowance of a deduction that will not adversely affect the qualification of an existing plan, will be made on a case by case basis. In general, such a return of employer contributions will be permissible only if the surrounding facts and circumstances indicate that the contribution of the amount that subsequently reverts to the employer is attributable to a good faith mistake of fact or a good faith mistake in determining the deductibility of the contribution.

The Plan's actuarial valuation report, prepared on August 21, , indicates that for the plan year commencing April 1, , the maximum deductible contribution, as calculated by the plan's actuary, was \$. On August 27, , an employer contribution of \$ was made to the plan.

Surrounding facts and circumstances provide no indication that the determination of the maximum deductible contribution that had been communicated in the Plan's actuarial valuation report involved any mistake in fact or any good faith mistake in determining the deductibility of the contribution. On the contrary, the request submitted under Revenue Procedure 90-49 relies on that determination of the maximum deductible contribution of \$ as indicative of the amount upon which a deduction is claimed by the employer. Moreover, surrounding facts and circumstances provide no indication that the employer contribution made to the Plan was attributable to any good faith mistake in reliance on the plan's actuarial valuation report. That is, there is no evidence of a good will mistake in fact or a good will mistake in determining the deductibility of contributions supporting the contribution of any amount in excess of the amount of \$

Accordingly, since there is no evidence that employer contributions made in excess of \$ were made on the basis of a good faith mistake in fact or on a good faith mistake in determining the deductibility of the contribution, the request for the return of employer contributions upon disallowance of the deduction for the contribution amount in excess of the maximum deductible limit is denied.

A copy of this letter is being furnished to your authorized representative pursuant to a power of attorney (Form 2848) on file in this office.

If you have any questions on this ruling letter, please contact

Sincerely,



David Ziegler, Manager
Employee Plans Actuarial Group 2